

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

AMGUARD INSURANCE COMPANY,

Plaintiff,

Civil Action No.: 4:20-cv-01853

vs.

T & J ENTERPRISES, INC., *et al.*,

Defendants.

**DEFENDANT DEBORAH MOSES AND MINOR CHILD M.M.'S MOTION TO  
DISMISS OR STAY THIS DECLARATORY JUDGMENT ACTION IN FAVOR OF  
PARALLEL STATE PROCEEDINGS WHERE FULL RELIEF MAY BE GRANTED**

COME NOW Defendants Deborah Moses, Individually, and as Next Friend of M.M., a minor, (hereafter also "the Moses"), by and through their attorneys, and submit the following Motion to Dismiss and/or Stay Amguard Insurance Company's (hereafter also "Amguard") First Amended Declaratory Judgment Complaint:

1. Deborah Moses filed a lawsuit against T&J Enterprise, Inc., in the Circuit Court for Jefferson County, Missouri, cause number 19JE-CC00784 for injuries she and her daughter sustained as the result of a wreck in a haul by T&J Enterprises, Inc. tow truck.
2. Plaintiff Amguard filed this declaratory judgment action seeking a declaration regarding its duties of defense and to indemnify in a Missouri state court civil case between the Moses' and T&J Enterprise, Inc., (hereafter also "T&J").
3. The aforementioned case has now been dismissed. The issue is now moot and there is no longer a justiciable controversy.

4. Additionally, the Circuit Court of Jackson County at Independence, case number 2216-CV07062, has entered a final judgment regarding the facts of this case and Plaintiff is collaterally estopped to contest the underlying judgment.

5. Defendants Moses have filed a Missouri state equitable garnishment action in Cole County, Missouri.

6. Therefore, there is currently pending a state equitable garnishment action which includes the same issues of coverage as this federal declaratory judgment action.

7. The Circuit Court of Cole County is the proper forum for the determination of these matters, as it is a state insurance matter.

8. Courts act properly when they stay actions “for declaratory relief where parallel proceedings, presenting opportunity for ventilation of the same state law issues, [are] underway in state court.” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 290, (Mo. banc 1995).

Respectfully submitted,

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ATTORNEYS FOR DEBORAH MOSES AND M.  
MOSES

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of February 2023, the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/Adam G. Grayson